STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	
Francine Steineman,	)	Case No. 2020–CP–46–02221
	)	
Plaintiff,	)	ORDER
	)	
	)	
vs.	)	DENYING DEFENDANTS' MOTION TO RECONSIDER, ALTER, OR AMEND AND GRANTING IN PART PLAINTIFF'S MOTION TO ALTER OR AMEND.
	)	
Meridian Security Insurance Company	)	
	)	
Defendant.	)	
_____	)	

This matter is before this Court on Defendant's motion to reconsider, alter, or amend and Plaintiff's motion to alter or amend.

Procedural History

On June 2, 2022, this Court issued an order holding that Meridian Security Insurance Company ("Defendant") could not rely on the "duplicate payments" provisions of the insurance policy it issued to Francine Steineman ("Plaintiff") to deny uninsured motorist ("UM") or underinsured motorist ("UIM") coverage to Plaintiff resulting from the incident that was the subject of this lawsuit. This holding was based on the Court's ruling that the policy language does not bear the interpretation Defendant preferred. It was also based on the Court's ruling that any provision effectively drafted to deny UM (but not UIM) coverage is void because it is contrary to South Carolina's public policy.

Defendant filed a motion to reconsider, alter, or amend, arguing that persuasive caselaw interpreted similar duplicate payments provisions in its favor. Defendant also argued that the duplicate payment provisions, properly interpreted, were contrary to public policy only to the

extent that they applied to the basic limits of UM coverage—that is, that an effectively drafted provision forbidding a victim from recovering for damages under both liability coverage and UM for injuries arising from the same incident is fully consistent with public policy to the extent that the UM coverage provided by the policy exceeds the basic limits required by statute ($25,000/$50,000/$25,000).[1] Plaintiff responded and filed a motion to alter or amend, asking this Court to hold that an effectively drafted bar to recovery under both liability and either or both UM and UIM would be contrary to South Carolina's pubic policy regardless of the amounts of coverage at issue.

After a hearing, this Court took the matter under advisement. Defendant's motion is hereby denied. However, after thorough consideration, this Court partially grants Plaintiff's motion to alter or amend but for different reasons than those articulated in Plaintiff's written motion.

Analysis

An automobile insurance policy that offers stated amounts of liability and either or both UM and UIM coverage but provides that any person who recovers liability coverage cannot also recover either or both UM or UIM coverage violates public policy. These "either/or" provisions are void[2] for two reasons. First, a policy that prevents victims from recovering UM up to the basic

[1] That is, an at-fault driver's insurance policy containing an effectively drafted provision barring recovery more than one category of coverage for a single incident (referred to below as an "either/or" provision) could lawfully provide that a victim who recovers any liability coverage cannot recover more than the basic limits in UM coverage. For example, Driver A secures an automobile insurance policy with large liability limits ($500,000/$750,000/$500,000) and somewhat large UM coverage ($100,000/$300,000/$100,000). Victim B is a passenger in Driver A's car when the negligence of Driver A and Driver C, who is operating another automobile, is injured and incurs $1,000,000 in bodily injury damages. She could recover the liability bodily injury coverage maximum of $500,000. An either/or provision would, under Defendant's interpretation of South Carolina public policy, prevent her from also recovering more than $25,000 in UM coverage.

[2] Automobile insurance policies in South Carolina must contain all provisions required by law; any provision contrary to our insurance statutes or public policy are void. See *Williams v. Gov't Emps. Ins. Co.*, 409 S.C. 586, 598 (2014) (citations omitted); S.C. Code § 38-77-10(3); S.C. Code § 38-77-20. South Carolina by statute requires that all automobile insurance policies include liability coverage in the amounts of at least $25,000 per

limits ($25,000/$50,000/$25,000) merely because they also are entitled to and have claimed or recovered all or some liability coverage—or vice versa—violates the statutes that require automobile insurance policies to provide minimum amounts of both liability and UM coverage ($25,000/$50,000/$25,000). Second, and more broadly, South Carolina insurance and contract law prohibits automobile insurance policies from agreeing to a stated amount of a category of coverage (liability, UM, or UIM) in one provision of the policy and then in a subsequent provision effectively reducing that stated amount by redefining the category of coverage more narrowly than the insurance statutes define that category.

Policies Must Provide at Least the Basic Limits of Liability and UM Coverage, Respectively

Liability and UM/UIM converge when a passenger is injured and both the insured driver and the uninsured or underinsured driver of the other vehicle are at fault. Because liability coverage is required by statute to cover "loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of" the driver's car, S.C. Code §38-77-140(A), that liability coverage must necessarily cover the injured passenger in such a case to the extent of the lesser of the injuries attributable to the at-fault driver or the liability limits. Because UM is defined as coverage for "all sums which [the insured] is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle," S.C. Code §38-77-150(A), the UM coverage must also

incident in bodily injury to a single person, at least $50,000 per incident for bodily injury to two or more persons, and $25,000 per incident for property damage ($25,000/$50,000/$25,000). S.C. Code § 38-77-140. The policy must also include UM coverage in the same minimum amounts. S.C. Code § 38-77-150. In addition to the minimum required liability and UM coverage ("basic limits"), yet another statute requires automobile insurance companies to offer to the insured the option to buy UM coverage in the same amounts as the insured's liability coverage, as well as a similar offer to buy underinsured motorist ("UIM") coverage in the same amounts as the insured's liability coverage. S.C. Code § 38-77-160.

necessarily cover the injured passenger in such a case to the extent of the lesser of the injuries attributable to the uninsured driver or the UM limits.

Therefore, a policy provision forbidding a victim from recovering UM when the victim has already recovered liability coverage—that is, that the insurance company is not required to pay under the UM provision if it must pay under the liability provision—would violate South Carolina insurance law at least to the extent of the basic limits of liability and UM ($25,000/$50,000/$25,000) because those basic limits are the required minimum amount of coverage defined as liability coverage and the minimum amount of coverage defined as the separate and distinct category of UM coverage. The reverse is also true. An automobile insurance policy cannot provide that a victim who recovers UM coverage cannot recover any liability coverage or vice versa.

Policies Cannot Reduce the Amount of a Category of Coverage by Redefining the Category

However, the South Carolina Supreme Court's interpretation of S.C. Code § 38-77-142(A)-(C) goes further. Under § 142, "once the face amount of coverage is agreed upon, it may not be arbitrarily reduced or limited by conflicting policy provisions that effectively retract this stated coverage." *Williams*, 409 S.C. at 604. That is, once the parties agree on a face amount of a category of coverage defined by statute, any provision that purports to exclude or limit that category of coverage by redefining the category of coverage or denying coverage in situations covered by the statutory definition of that category of coverage—such as an either/or provision—is unenforceable because it is an attempt to walk back the parties' agreement by reducing the face amount of coverage in that category. *See id.* at 603-04; *Nationwide Mutual Fire Insurance Company v. Walls*, 433 S.C. 206 (2021).

For instance, in *Williams*, an insurance company sold a policy for a face amount of $100,000 in liability bodily injury ("BI") coverage for a single person, but the policy contained an exclusion of coverage that reduced the amount of liability BI coverage to the basic limit (then $15,000) when the victim was the insured's family member. *Williams*, 409 at 592. The definition of liability coverage includes coverage for injuries to victims who are family members of the insured. *Id.* at 600 (citing S.C. Code §38-77-142(A) and (B)). The provision attempting to reduce the face amount of coverage to the basic limits when the victim was an insured's family member was be an attempt to avoid the statute's definition of liability coverage—and the parties' agreement to sell and buy, respectively, the stated amount of liability coverage—and was therefore void. *Id.* at 603-04. Therefore, as the *Williams* Court reasoned, any provision that attempts to eliminate or reduce UM or UIM coverage merely because the victim was also entitled to liability coverage under the policy is an attempt to avoid the statute's definition of UM and UIM, and is therefore void. It is also unenforceable because it is inconsistent with the parties' agreement on the face amount of that category of coverage. *Id.*

Here, the relevant statutes define liability coverage to be coverage for injury to others caused by the insured driver's fault, UM coverage to be coverage for injury to any insured victim caused by an uninsured motorist's fault, and UIM coverage to be coverage for injury to any insured caused by an underinsured motorist's fault to the extent that injury exceeds the underinsured motorist's coverage. S.C. Code §§ 38-77-150 & 160. The insurance company offered liability, UM, and UIM coverage of $250,000 each for BI to a single person. An insured driver was partially at fault and is covered by the liability BI. An uninsured motorist was also at fault and is covered by the UM and UIM BI coverages. Defendant's attempt to prevent recovery under each category of coverage relied on a purported either/or provision, which if interpreted in the manner urged by

Defendant[3] would eliminate or reduce the face amount of coverage agreed upon in the insurance policy. Like the family step-down provisions in *Williams* and the felony/flight step-down provisions in *Walls*, an effectively drafted "either/or" provision in this case would have the effect of reducing the amount of coverage the parties actually agreed to and would therefore violate S.C. Code § 38-77-142.

Conclusion

The public policy portion of this Court's order dated June 2, 2022, is hereby WITHDRAWN. Defendant's motion to alter or amend is DENIED because the Defendant's preferred interpretation of the policy's duplicate payments provisions is incorrect and further because South Carolina public policy invalidates provisions that are effectively drafted to yield the interpretation Defendant urges. Plaintiff's motion to alter or amend is hereby PARTIALLY GRANTED for the reasons stated above.

THEREFORE, the court (1) DENIES Defendant's motion to reconsider, alter, or amend; (2) PARTIALLY GRANTS Plaintiff's motion to alter or amend, (3) WITHDRAWS the portion of its June 2, 2022, order dealing with public policy, and (4) HOLDS that South Carolina public policy renders void automobile insurance policy provisions that limit a victim who recovers one category of coverage (liability, UM, or UIM) from recovering another category, and also renders unenforceable an automobile insurance policy provision that offers a stated amount of a category of coverage (liability, UM, or UIM) in one provision of the policy and then in a subsequent

[3] The prior order held that the "duplicate payments" provision should not be interpreted the way Defendant urges, and this order does not change, clarify, modify, or qualify that holding in any way.

provision effectively reducing that stated amount by redefiniting that category of coverage more narrowly than the relevant statutes do.

IT IS SO ORDERED.

_____, 2022
York, SC

_____
Hon. William A. McKinnon
Presiding Judge

York Common Pleas

Case Caption: Francine Steineman VS Meridian Security Insurance Company

Case Number: 2020CP4602221

Type: Order/Other

So Ordered

/s William A. McKinnon, #2761, Circuit Judge